IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS Nos. 5076, 5078, 5080 & 5081 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : NO

NAVINCHANDRA BHAGVANDAS GANDHI

Versus

STATE OF GUJARAT & ORS.

Appearance:
MR HR PRAJAPATI and MR MR PRAJAPATI for Petitioners
MS HARSHA DEVANI, ld. APP for respondents Nos.1 to 3
MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 11/08/2000

COMMON ORAL JUDGEMENT

All the four petitioners in these Special Civil Applications are co-detenus. These petitions have been filed against the detention orders passed against each of the petitioners under the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980. The detention orders were passed against these petitioners so as to prevent them from black marketing essential commodities like petroleum solvents and acting in the manner prejudicial to the supply of essential commodities by the District Magistrate,

Vadodara, in exercise of powers conferred under sub-section (2) of Section 3 of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980. The grounds of detention were enclosed with the orders of detention. The necessary details are as under:

SCA No.	Name of detenu	Date of detention order	Date of service of detention order	Date on which the detention was approved by State Govt.
5076/2000	Navinchandra Bhagvandas Gandhi	28th Apr. 2000	8th May 2000	9th May 2000
5078/2000	Jayendra @ Jaggubhai Nanbhai Khachar (Darbar)	27th Apr. 2000	8th May 2000	8th May 2000
5080/2000	Chandubhai @ Manojbhai Mela- bhai Nayak	27th Apr. 2000	8th May 2000	8th May 2000
5081/2000	Dinesh Gangaram Patil	28th Apr. 2000	8th May 2000	9th May 2000

2. These petitions challenging the respective detention orders were filed on 22nd May 2000 and the Rule was issued in each of these petitions on 23rd May 2000. In response to the Rule issued by this Court, affidavit-in-reply dated 27th June 2000 was filed by the Dy.Secretary to the Govt. of Gujarat and further affidavit-in-reply dated 19th July 2000 was filed by the District Magistrate, Vadodara in Special Civil Application No.5076 of 2000. A counter affidavit purporting to be dated 27th June 2000 has also been filed on behalf of the Union of India in the Special Civil Application No.5076 of 2000. In Special Civil Application No. 5078 of 2000, an affidavit-in-reply dated 5th July 2000 has been filed by the District Magistrate, Vadodara and a counter affidavit dated 27th June 2000 has been filed on behalf of the Union of India and an affidavit-in-reply dated 21st July 2000 has been filed by the Dy.Secretary to the Govt. of Gujarat. In Special Civil Application No. 5080 of 2000, an affidavit-in-reply dated 19th July 2000 has been filed by the District Magistrate, Vadodara and an affidavit-in-reply dated 26th July 2000 has been filed by

the Dy.Secretary to the Govt. of Gujarat. In Special Civil Application No. 5081 of 2000, an affidavit-in-reply dated 19th July 2000 as filed by the District Magistrate, Vadodara is on record.

3. When the matters came up before this Court on 4th August 2000, during the course of arguments it was found that despite the affidavits-in-reply which had been filed earlier by the respondents, the respondents failed to explain as to why the detention orders were not served immediately and therefore, time was granted to explain as to why the orders could not be served on time. The learned APP has filed an affidavit dated 10th August 2000 of the Dist. Supdt. of Police, Vadodara in Special Civil Application No. 5076 of 2000 seeking to explain the delay by saying that at the time when the detention order was passed on 28th April 2000, the petitioner was in judicial custody in Savli Sub-Jail and therefore, the opinion of the ld. Public Prosecutor in Savli Court was sought for on Sunday, i.e. 29th April 2000; on Monday, a request was made by the Public Prosecutor before the Judicial Magistrate, First Class for sending the petitioner to Surat Jail under the aforesaid detention order and it has been mentioned that the ld. Judicial Magistrate informed that the application be made before the Sessions Court, Vadodara. The application was moved before the Sessions Court, Vadodara on 8th May 2000 and on the very same day, the permission was granted by the Addl. Sessions Judge, Vadodara.

4. Although the detention orders passed with regard to each of these petitioners have been challenged on more than one grounds, this Court finds that it is not necessary to deal with all the grounds as have been raised because these petitions can be decided on the sole ground that the detention orders were served on 8th May 2000 in each of these matters and the detention orders as passed by the detaining authority had been approved by the State Govt. on 8th May/9th May 2000 as indicated above and therefore, the petitioners herein were deprived of the opportunity to make the representation before the concerned authority.

5. There is no dispute about the factual position that all these four petitioners were accused in a case being C.R. No.21 of 2000 with regard to an incident dated 7th March 2000 for the offences under Sections 420, 467, 468, 471 read with Section 34 of IPC and Sections 3 and 7 of the Essential Commodities Act. All these petitioners had been arrested in March 2000 in connection with the said criminal case and all of them were in custody on the date when the detention orders were passed on 27th/28th April 2000. These detention orders were served upon the petitioners on 8th May 2000 and the detention orders were approved on 8th May/9th May 2000. The argument raised on behalf

of the petitioners is that the approval of the detention orders by the State Govt. on 8th May/9th 2000 as against the service of the detention orders on 8th May 2000 have deprived the petitioners of their right to make a representation before the detaining authority, the petitioners could represent before the detaining authority before the expiry of 12 days from the detention. Since the detention orders were approved by the State Govt. on the date of the service of the detention orders, i.e. 8th May 2000 or on the next day, i.e. 9th May 2000, there was no time left for them to represent before the detaining authority because there is no question of consideration of representation by the detaining authority after the approval of detention orders by the State Govt. The petitioners have submitted that they could have satisfied the detaining authority that it was not a case in which they were required to be detained and that the satisfaction which had been arrived at by the detaining authority was not based on germane material against them along with the other grounds. In the facts of the present cases, it is quite clear that the detention orders dated 27th/28th April 2000 were served on 8th May 2000 and by the time they were served in two of these cases, the approval was accorded by the State Govt. on the same date and in other two cases, it was accorded on 9th May 2000 and therefore, the petitioners were deprived of their right to represent before the detaining authority. The affidavit dated 10th August 2000 as has been filed by the Dist. Supdt. of Police, Vadodara today before this Court only lends strength to the case of the petitioners as to how they were deprived of their rights to represent before the detaining authority. Even in this affidavit, what has been stated is that after the receipt of the detention orders in the evening on 28th April 2000 by the Dist. Supdt. of Police, the opinion of the Public Prosecutor in the Savli Court was sought for on Saturday, i.e. 29th April 2000 because the petitioners were in judicial custody and that a request was made on Monday before the Judicial Magistrate, First Class, for sending the petitioner to Surat Jail. The request for sending the petitioner to Surat Jail from Savli sub-jail does not mean that the detention order was served upon him. In any case, this exercise appears to have been undertaken on Monday, i.e. 1st May 2000 and when the Judicial Magistrate told the Public Prosecutor that they must move the Sessions Court, there is no explanation worth the name as to why the application before the Sessions Court was moved as late as on 8th May 2000. It is also noticed that on the day the application was moved, i.e. 8th May 2000, the Court passed the order on the same day, i.e. 8th May 2000 and no explanation worth name has been given as to why this application before the Sessions Court was filed as late as on 8th May 2000. It also does not stand to reason as to why all this time was wasted in this exercise. The task was to serve the detention orders and whereas it was known from the day one that the petitioners were already in judicial custody

and were in jail in connection with the criminal case as aforesaid, there could have been no difficulty in serving the detention order immediately.

6. Be that as it may, the fact remains that the service of the detention orders dated 27th/28th April 2000 on 8th May 2000 and the approval of these detention orders on 8th May 2000/9th May 2000 by the State Govt. has necessarily resulted into a denial of opportunity under Art.22(5) of the Constitution of India to all these petitioners for representing their case before the detaining authority and on that ground alone the detention stands vitiated. Accordingly the detention orders dated 28th April 2000 and 27th April 2000 passed against the petitioners in Special Civil Applications Nos. 5076, 5081 of 2000 and 5078 and 5080 of 2000 as passed by the detaining authority against the petitioners are hereby quashed and set aside. The detention is declared to be illegal.

7. All these four petitions are hereby allowed and it is ordered that the petitioners, namely, (1) Navinchandra Bhagvandas Gandhi (SCA No.5076/2000 - at present lodged in Surat Jail), (2) Jayendra @ Jaggubhai Nanbhai Khachar (Darbar) (SCA No.5078/2000 - at present lodged in Surat Jail), (3) Chandubhai @ Manojbhai Melabhai Nayak (SCA No.5080/2000 - at present lodged in Mehsana Jail), and (4) Dinesh Gangaram Patil (SCA No.5081/2000 - at present lodged in Palanpur Jail) shall be released forthwith if not required in any other case. Rule is made absolute accordingly in all these four Special Civil Applications.

(M.R. Calla, J.)

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